

March 7, 2017

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: Petition for Rulemaking and Declaratory Ruling  
Regarding Prior Express Consent Under the Telephone  
Consumer Protection Act of 1991 (“TCPA”), CG  
Docket Nos. 02-278, 05-338**

Dear Ms. Dortch:

The News Media Alliance (“NMA”) writes in opposition to the petition for rulemaking and declaratory ruling filed by Craig Moskowitz and Craig Cunningham in the above-referenced dockets.<sup>1</sup> The petitioners’ request would require consumers who already have consented to receive automated or prerecorded informational calls on their mobile telephones to go through additional and unnecessary steps to receive such communications, and impose significant costs on businesses in the process.

Under the FCC’s current interpretation of section 227(b)(1)(A) of the Communications Act, providing a mobile telephone number is sufficient to meet the TCPA’s “prior express consent” standard for informational calls. The Commission has held this position for decades, reiterating it several times,<sup>2</sup> including in its most recent omnibus TCPA order.<sup>3</sup> The Petition offers no compelling reason to change this settled interpretation, upon which consumers and businesses have come to rely. To the contrary, there are multiple reasons to maintain it:

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<sup>1</sup> *Petition of Craig Moskowitz and Craig Cunningham for Rulemaking and Declaratory Ruling*, CG Docket Nos. 02-078, 05-228 (filed Jan. 22, 2017) (“Petition”).

<sup>2</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling, 23 FCC Rcd 559, 564 (2008) (“2008 Order”) (“The restriction on calls to emergency lines, pagers, and the like does not apply when the called party has provided the telephone number of such a line to the caller for use in normal business communications,” House Report, 102–317, 1st Sess., 102nd Cong.); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report & Order, 7 FCC Rcd 8752, 8769 (1992) (“1992 Order”) (citing same).

<sup>3</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling & Order, 30 FCC Rcd 7961, 7991-92 (2015) (“2015 Order”) (“For non-telemarketing and non-advertising calls, express consent can be demonstrated by the called party giving prior express oral or written consent or, in the absence of instructions to the contrary, by giving his or her wireless number to the person initiating the autodialed or prerecorded call.”).

*First*, the interpretation allows consumers to receive the calls or texts they desire without imposing unnecessary barriers on the consent process. It is logical to assume that a consumer that voluntarily provides his or her mobile telephone number does so with an expectation that he or she may be contacted at that number by the person or entity to whom that telephone number was provided. Imposing additional requirements on this consent process would stymie—rather than improve—the ability of parties to communicate voluntarily.

*Second*, the interpretation is limited. It applies only to informational calls.<sup>4</sup> The Commission has long held that informational calls are not promotional in nature, and it stands to reason that a person or entity to whom a mobile telephone number has been provided under these circumstances will be judicious in communicating with that number, particularly given the consumer's ability to revoke the consent provided. By way of example, a segment of newspaper subscribers pays a monthly or annual recurring fee for a subscription by credit card and routinely provides a mobile telephone number when purchasing that subscription. If an issue arises with the consumer's credit card (or other payment method), it stands to reason that the newspaper should be able to contact the consumer at the telephone number provided to address the issue; and it is equally clear that the consumer would expect to be contacted at that number. This is not an isolated example. When a subscriber registers for delivery of a newspaper's print edition, the newspaper may contact him or her at the telephone number provided to inform the subscriber of the date delivery is scheduled to start. This type of informational message ensures that if the subscriber does not begin to receive the newspaper on that date, he or she will know to contact customer service. Again, it stands to reason that the subscriber would expect to receive this type of communication at the phone number he or she provided. Other instances in which a subscriber would expect to be contacted include when delivery of the print edition will be delayed due to bad weather, or to confirm a temporary suspension of delivery during a vacation period. The nature of the consent provided would not permit a newspaper to market products or services on these calls, and if a newspaper were to abuse its ability to transmit these calls the consumer very likely would revoke his or her consent—and possibly cancel the subscription entirely.

*Third*, imposing a higher standard of consent on informational calls, as the Petition proposes, would harm businesses without a commensurate benefit to consumers. Consider a business that needs to make hundreds of informational calls a day, but engages in relatively little telemarketing. Changing the current interpretation of "prior express consent" would require this business to invest in additional paper and electronic forms to obtain written consent from all consumers and to invest in systems that are designed to store and maintain that consent information. Imposing these burdens on businesses without a corresponding benefit to consumers would only increase costs that ultimately would be borne by consumers.

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<sup>4</sup> See *supra* at note 3. Under the Commission's interpretation of the TCPA, automated or prerecorded telemarketing or advertisement calls are subject to a different consent requirement which is not at issue in Petition.

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In short, the Petition seeks to burden both consumers and businesses without adequate basis and should be denied forthwith. Any questions concerning this submission should be addressed to the undersigned.

Respectfully submitted,

Alabama Press Association  
Arizona Newspapers Association  
California Newspaper Publishers Association  
Florida Press Association  
Georgia Press Association  
Hoosier State Press Association  
Kansas Press Association  
Kentucky Press Association  
Louisiana Press Association  
MDDC Press Association  
Minnesota Newspaper Association  
Mississippi Press Association  
Missouri Press Association  
Nebraska Press Association  
Nevada Press Association  
New England Newspaper and Press Association  
New Jersey Press Association  
New York News Publishers Association  
New York Press Association  
News Media Alliance  
North Carolina Press Association  
North Dakota Newspaper Association  
Ohio News Media Association  
Oregon Newspaper Publishers Association  
Pennsylvania NewsMedia Association  
S.C. Press Association  
Texas Press Association  
Utah Press Association  
Vermont Press Association  
Virginia Press Association  
West Virginia Press Association  
Wisconsin Newspaper Association